

Negro President: Jefferson and the Slave Power

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Excerpt

Introduction: The Three-Fifths Clause

The election of Mr. Jefferson to the presidency was, upon sectional feelings, the triumph of the South over the North - of the slave representation over the purely free. - John Quincy Adams

What did Thomas Jefferson's Federalist critics mean, after 1800, when they called him the "Negro President"? A person first encountering the term might, in the not too distant past, have thought it referred to Jefferson's private life at Monticello. In those hagiographical days, calling him a "Negro president" might have been interpreted to mean that he was a pro-Negro president, an *ami des noirs* who sympathized with the plight of slaves, though he could not do much about it. That was the line I heard when I first visited Monticello more than forty years ago. More recently still, the term might be taken to mean that he loved his own slave Sally Hemings, or exploited her, or both. But those first calling him the "Negro President" were not prying into his private life. They were challenging his public boast that the election of 1800 was a "Second Revolution" based on the expressed will of a popular majority. It was no such thing, they argued. In terms of the number of actual votes cast, John Adams was re-elected. The Second Revolution never occurred.

Jefferson's Election

If real votes alone had been counted, Adams would have been returned to office. But, of course, the "vote" did not depend solely on voters. Though Jefferson, admittedly, received eight more votes than Adams in the Electoral College, at least twelve of his votes were not based on the citizenry that could express its will but on the blacks owned by southern masters. A bargain had been struck at the Constitutional Convention - one of the famous compromises on which the document was formed, this one intended to secure ratification in the South. The negotiated agreement decreed that each slave held in the United States would count as three-fifths of a person - the so-called federal ratio - for establishing the representation of a state in the House of Representatives (and consequently in the Electoral College, which was based on the House and Senate numbers for each state in Congress).

It galled the Federalists that Jefferson hailed his 1800 victory as a triumph of democracy and majority rule when, as the *Mercury and New-England Palladium of Boston* said (January 20, 1801), he had made his "ride into the temple of Liberty on the shoulders of slaves." He was president only because of "somber" or "sable" non-votes, and the *Columbian Centinel* noted (December 24, 1800) that the half-million slaves affecting the outcome had no more will in the matter than "New England horses, cows, and oxen." Timothy Pickering, the former secretary of state under Washington and Adams, coined the term "Negro President" and made it current among his Federalist allies - along with references to Negro electors, Negro voters, and Negro congressmen. Senator William Plumer of New Hampshire wrote that "the Negro votes made Mr. Jefferson president." He felt that "Negro electors exceed those of four states, and their representatives are equal to those of six states" (PM 67).

Even four years before the 1800 election, New Englanders had feared that Jefferson might win on his first try for the presidency, but only because of the "Negro electors." Connecticut governor Oliver Wolcott said then that the country would not submit to election "by a Negro representation only," and papers in his state predicted that such an event might prompt the North to secede from the Union. When their fears were confirmed by the outcome in 1800, Pickering faced the 1804 contest with a dread premonition:

Without a separation, can those [New England] states ever rid themselves of Negro Presidents and Negro Congresses, and regain their just weight in the political balance? At this moment, the slaves of the middle and southern states have fifteen representatives in Congress, and they will appoint that number of electors of the next president and vice president; and the number of slaves is continuously increasing. (P 14.101)

The Federalists predicted that this Negro "representation" would increase year by year so long as the federal ratio were retained. This prospect is what they meant by "the slave power." They did not mean the power that plantation owners exerted over their black slaves, or the power slaves might someday use in retaliation. They meant the power that slave states wielded over non-slave states. The Federalists said that the plantation men were their masters. As William Plumer wrote in a public appeal to his New Hampshire constituents:

Every five of the Negro slaves are accounted equal to three of you . . . Those slaves have no voice in the elections; they are mere property; yet a planter possessing a hundred of them may be considered as having sixty votes, while one of you who has equal or greater property is confined to a single vote.

Though the election of 1800 is one of the most thoroughly studied events in our history, few treatments of it even mention the fact that Jefferson won it by the slave count. It is called the first modern election, because political parties contested it. People debate whether it earns Jefferson's own title for it, the "Second Revolution." But Jefferson's ascendancy is most frequently hailed as a triumph for the stability of the young constitutional system, since the incumbent was ousted without violence: "Above all, the election demonstrated that control of the vast political power of the national government could pass peacefully from one political party to another."

The election is studied, as well, because it was deflected to the House of Representatives for decision, since the two Republican candidates, Jefferson and Burr, received a tie vote in the Electoral College. That tie led to one of the earliest constitutional readjustments after the adoption of the Bill of Rights - the Twelfth Amendment, which established a separate vote for the vice presidency. The election can also be treated as a clash between the personalities of Jefferson and Burr, or between Jefferson and Adams. These are all interesting aspects of the event. But they are not enough, in themselves, to explain the odd neglect of the fact that this was an election where the federal ratio made the margin of difference.

Two authors have written books on the election of 1800 without a single reference to the votes given Jefferson by the slave bonus. A fine symposium on the election, rated in its own pages as "the best new scholarship on the politics of 1800," has in its sixteen major essays only three glancing mentions of the federal ratio. Respected biographers of the principals in the affair - Adams, Jefferson, and Burr - also fail to mention the boost given Jefferson by the three-fifths clause, or they refer to it only peripherally, as if it were unimportant. To judge by the mass of things written on the election, Jefferson's debt to the federal ratio must be one of the great nonevents of our past.

Yet for Federalists the slave count was not a subsidiary concern; it was at the very core of sectional division in the country. Josiah Quincy, who became the president of Harvard, always maintained that "the slave representation is the cause of all the difficulties we labor under." Fisher Ames called it a flaw in the Constitution that, "instead of apportioning, disproportions representatives to numbers [of citizens]." For such men, the ratio was even more pernicious in its consequences than the clauses in the Constitution that recognized the legitimacy of the slave trade for the next twenty years (Article I, Section 9) or that imposed a fugitive slave law on the states (Article IV, Section 2). The federal ratio undermined the very possibility of debating or changing the status of slaves - as the gag rules of the 1830s and 1840s would demonstrate. It gave a key electoral tool for maintaining slavery against a majority of white voters. The federal ratio was such an irritant to the Federalists that one man's gibe at Jefferson's children by Sally Hemings was seen as swelling the ratio. Five children by her would give him three extra votes.

Great men can never lack supporters Who manufacture their own voters.

Reach of the Three-Fifths Clause

Why is the impact of the federal ratio so little known? The first reaction of many people when told about its role in Jefferson's election is to ask why they never heard of it before. There are several explanations for this, all contained within the fact that through much of our history Americans have shied away from slavery as too divisive or hot an issue, leading to a great national amnesia about its impact and reach. More particularly, the force of the three-fifths clause is neglected because it "only" affected one presidential election, Jefferson's - though Paul Finkelman suggests that it may have deprived John Quincy Adams of a majority in the contested election of 1824.

The federal ratio is neglected, as well, because dire predictions of southern majorities in the Congress never came true, even with the benefit of the slave count, since immigration was heavier in the North during the early nineteenth century. But the power of the South was not measured solely in terms of an overall majority. On crucial matters, when several factions were contending, the federal ratio gave the South a voting majority. Without the federal ratio as the deciding factor in House votes, slavery would have been excluded from Missouri (see Chapter 14 below), Jackson's Indian removal policy would have failed (see Chapter 16), the 1840 gag rule would not have been imposed (Chapter 16), the Wilmot Proviso would have banned slavery in territories won from Mexico (Chapter 16), the Kansas-Nebraska Bill would have failed (Chapter 16). Other votes were close enough to afford opposition to the South a better chance, if the federal ratio had not been counted into the calculations from the outset. Elections to key congressional posts were affected continually by the federal ratio, with the result that southerners held "the Speaker's office for 79 percent of the time [before 1824], Ways and Means for 92 percent." Leonard Richards shows another pervasive influence of the three-fifths clause. Even when it did not affect the outcome of congressional votes, it dominated Democratic caucus and convention votes, since the South had a larger majority there than in the total body. The federal ratio guaranteed that Democratic presidential nominations would be friendly to the slave interest. When control of the caucus seemed to be slipping from southern hands, a two-thirds requirement for nominating candidates was installed, to give them power to veto unacceptable men. The federal ratio was, therefore, just the starting point for seizing and solidifying positions of influence in the government. It was a force supplemented by other maneuvers. It gave the South a permanent head start for all its political activities.

The slave states always had one-third more seats in Congress than their free population warranted - forty-seven seats instead of thirty-three in 1793, seventy-six instead of fifty-nine in 1812, and ninety-eight instead of seventy-three in 1833 . . . The Deep South also imported more slaves from Africa in the twenty years from 1788 to 1808 (the year the international slave trade was legally banned) than in any other twenty-year period . . . the three-fifths rule would also play a decisive role in every political caucus and every political convention.

The federal ratio, and its ripple of side effects, had a great deal to do with the fact that for over half a century, right up to the Civil War, the management of government was disproportionately controlled by the South.

In the sixty-two years between Washington's election and the Compromise of 1850, for example, slaveholders controlled the presidency for fifty years, the Speaker's chair for forty-one years, and the chairmanship of House Ways and Means [the most important committee] for forty-two years. The only men to be reelected president - Washington, Jefferson, Madison, Monroe, and Jackson - were all slaveholders. The men who sat in the Speaker's chair the longest - Henry Clay, Andrew Stevenson, and Nathaniel Macon - were slaveholders. Eighteen out of thirty-one Supreme Court justices were slaveholders.

Seven justices delivered the majority opinion in the Dred Scott decision, and a majority of them were slaveholders. The lower courts, too, were stocked with pro-slavery men. Jefferson came into office complaining about a federal judiciary unbalanced in favor of Federalists; but that balance shifted to the other extreme over the next decades. Richard H. Brown states flatly: "From the

inauguration of Washington until the Civil War, the South was in the saddle of national politics. This is the central fact in American political history to 1860." Ten of the pre-Civil War presidents were slave owners themselves, and two of the postwar presidents had owned slaves earlier - Johnson and Grant. That means that over a quarter of the presidents in our history were slaveholders. Even those who were not southerners had to temporize with the South. Northerners or westerners like Van Buren, Tyler, Polk, Clay, and Buchanan helped craft the gag laws protecting slavery in the District of Columbia (see Chapter 16 below). Tyler added a slave Texas, and Polk waged the war for slave territory taken from Mexico.

It was a northerner who constructed the North-South alliance that protected slavery for decades: "Many scholars have long suspected that Van Buren and his colleagues purposely fashioned the Jackson coalition so that it protected slavery and southern interests." Buchanan worked behind the scenes to keep Dred Scott a slave. Even John Quincy Adams had to settle for a southern cabinet, led by the slaveholding Clay, to deal with a Jacksonian Congress. (For Adams's compromises with slavery before he entered Congress in 1831, see Chapter 15 below.) Control of the presidency rested on the slave power's deep roots in the patronage and court systems of the Jeffersonian party. A survey of the highest federal office holders in this time showed that half of them were southerners, though the North had almost twice the free population of the South. Southerners held 57 percent of the high civil-service posts under Adams, 56 percent under Jefferson, 57 percent under Jackson. And this imbalance was not merely a matter of quantity. It had to do with quality as well, since the South promoted strong, even extreme, proponents of slavery to office while keeping critics of slavery, even of the mildest sort, from among the northerners winning confirmation. In many ways, direct and indirect, this reflected the advantage given by the federal ratio. In 1843, Adams told the House of Representatives, "Your country is no longer a democracy, it is not even a republic - it is a government of two or three thousand holders of slaves, to the utter exclusion of the remaining part." An abolitionist would point out, in the 1850s, that six slave states, taken together, had a free population with 199 fewer people than Pennsylvania alone - which meant that the people in those states had twelve senators to the Pennsylvanians' two.

The importance of protecting the South's extra congressional votes became clear as early as 1792, in one of the first major battles under the Constitution, provoking the first presidential veto in our history. Initially, representation in the House had to be assigned by estimate, since there was no census to work from. But when the first census was taken in 1790, Congress tried to come up with truer figures. To set the total number of House seats, it divided the aggregate population of the nation by 30,000, the constitutional number for each representative. Then it assigned seats for each state proportionally, rounding figures for single seats up or down to the nearest 30,000, and sent the bill to Washington for his signature. Jefferson saw that Congress's act would add six seats to the North, and only two to the South - thus cutting into the extra margin given by counting slaves. He insisted that each state must be counted separately, with no extra seats for any fraction above the 30,000 divisor (J 23.370-77). This left the total number of seats eight fewer than the general population would warrant, but removed the four new seats from the North.

The Virginians in the cabinet, Jefferson and Edmund Randolph, working with Madison in the Congress, jointly drafted Washington's veto, which Hamilton had urged the president not to cast. When Washington objected to Jefferson that his veto would appear like a sectional move favoring the South, Jefferson said that the soundness of his own argument should be relied on, not the appearance of equity. The size of the slave representation was at issue in each of Jefferson's expansions of what he called "the empire of liberty" - the survey of the West, his purchase of Louisiana, his attempt to add the Floridas and Cuba to America, his support for slavery in Missouri and beyond, even his panic over Burr's detaching part of the South- west from the Union. (For Burr and the federal ratio, see Chapter 9 below.) In all these matters, the importance of the federal ratio has been overlooked, largely because historians have not listened to the objections raised on its basis by Federalist critics like Timothy Pickering. Each new addition to the plantation region became for them a flash point in the concern over the federal ratio, several times prompting moves to amend the Constitution by its repeal. People neglect this aspect when discussing the way Jefferson changed his stand on slavery in the territories between 1784, when there was no three-fifths representation, and 1820, when there was (see Chapter 1 below). Even Jefferson's drive to open as soon as possible the University of Virginia was meant to provide educated defenders for the extension of slavery westward, to keep good southerners away from Harvard or Yale, where men were taught "the sacred principle of our holy alliance of 'restrictionism.'" As David Brion Davis puts it, "When the chips were down, as in the Missouri crisis, he threw his weight behind slavery's

expansion." This had less to do with theories about slavery than with the concrete advantage the three-fifths clause gave to any added slave territory. Michael Zuckerman attributes Jefferson's plantation imperialism to a more or less subconscious "Negrophobia." It is more plausible, as well as more respectful, to see it as based on a simple political and economic calculus.

The Constitution rewarded too well any new slave territories for him to throw away this advantage given to "agrarian virtue." Even an argument used against taking the federal ratio too seriously shows how crucial it was. We are told that the North almost always had a majority of seats in Congress. But that just made the South more anxious to gain the territory that would make the federal ratio give them a majority - as it made the North more wary of letting that happen.

What Was the Slave Power?

The fear of a "slave power" has been dismissed as alarmist by those who think the term refers always to a slave owners' conspiracy. For a long time historians were frightened away from reference to a slave power by a long and influential article written by Chauncey Boucher in 1921, "In re That Aggressive Slavocracy." The key word in that defense of Boucher's beloved South was "aggressive." Boucher said that the South did not take unified and secret actions to deprive northerners of their liberties, as some conspiratorialists had claimed. Its actions were scattered, defensive, uncoordinated, and far from secret. Boucher denied, in Russel Nye's words, that there was "a secret and highly organized group with conscious aims of imposing restrictions upon traditional liberties." Some people did fear and denounce such a conspiracy. The most famous of these was Abraham Lincoln, who in his "House Divided" speech said that Stephen Douglas and Roger Taney of the Supreme Court had schemed with Presidents Pierce and Buchanan to bring about a second Dred Scott decision spreading slavery throughout the Union. One problem with the conspiracy view is that different men identified different conspirators with different secret aims.

David Brion Davis tried to overcome that problem by saying there was a "paranoid style," rather than a unified thesis, behind charges of a slave power conspiracy. He was picking up on Richard Hofstadter's concept of the paranoid style, formulated to criticize those who believed there were Communist conspirers in the federal government of the 1950s and 1960s. Davis explicitly compared conspiracy-mindedness like Lincoln's with Mc- Carthyism. One of the effects of this line of argument was to continue the marginalizing of abolitionists, an effort at which the South was very effective. William Lloyd Garrison was the Ur-conspiratorialist in this view. He thought even the Constitution a plot against freedom (a "covenant with death"). He went beyond a criticism of the open concessions to southern demands - on the three-fifths clause, the slave trade, and fugitive slaves - and found a pro- slavery slant throughout the document. A claim that this was the conscious aim of the framers cannot be sustained. But Paul Finkelman shows that the South did find ways to use many clauses of the Constitution, and many interpretations of it, to protect their slave property. The concept of "state sovereignty" was just one of these tools. For southerners "states' rights" meant first and foremost the right to declare that their slaveholding was no one else's business. Other constitutional conveniences afforded them included the bans on taxing exports or interstate taxes, which favored the products of slave labor. Similarly, the guarantee of states against domestic insurrection, and the use of the militia for that purpose, put the federal government on the slave owners' side if their property should rebel.

The "full faith and credit" clause made other states recognize all the South's legal provisions for slavery. And so on. Southerners did not foresee all possible uses of these clauses, and provide for their inclusion with that in mind, duping their northern counterparts in the process. But they were resourceful in turning each of them to their advantage when the occasion for doing so arose. That is what is really at issue. Most people, when they referred to the slave power, were not thinking of a conscious conspiracy with secret goals and instruments. They were talking about the slave interest, and the way that powerful interest prompted people to defensive measures, whether short-term or long-range. John Quincy Adams got it right in 1820, when he saw his own former vice president, John Calhoun, defending the extension of slavery into the West: "It is a contemplation not very creditable to human nature that the cement of common interest produced by slavery is strong and more solid than that of unmingled freedom." When, in this book, I talk about the slave power, I will mean the political efforts exerted to protect and expand slavery. This took many forms, but almost all of them depended in some way on the three-fifths clause, since that permeated the process of

representative government. It was a potential factor in situations long before it became actual - for instance, in the maneuvering to add new slave territories.

The series of antebellum compromises aimed at holding the nation together addressed the balance of power that would result from adding or blocking states with the three-fifths advantage. One of the great achievements of the slave power was to use its political clout to silence opposition. Freehling calls this its blackmail power over the northern Democrats who needed the southern part of their coalition. The price of this bargain was that slavery be ignored as an issue in the North. The Democrats there were able to marginalize abolitionists as "extremists," as disturbers of sectional harmony, as enemies of immigrant laborers (who did not want free black competition). It was in the name of "law and order," ironically, that these northern Democrats encouraged the mobs that beat or intimidated abolitionists. The result was that, even after the formal gag rules were defeated in Congress, there was a gentleman's agreement not to push the slavery issue in ways that would embarrass the South. Lincoln accurately described the general attitude toward slavery:

You must not say anything about it in the free states because it is not there. You must not say anything about it in the slave states because it is there. You must not say anything about it in the pulpit, because that is religion and has nothing to do with it. You must not say anything about it in politics because that will disturb the security of "my place." There is no place to talk about it as being a wrong, although you say yourself it is a wrong [emphasis in original].

Theodore Parker might have said, *De te fabula narratur*, "You're telling your own story," since Lincoln prudently avoided all open association with abolitionists like Parker. But Parker agreed with Lincoln's description of the way the nation was made almost mute on the subject of slavery.

It silences the great sects, Trinitarian, Unitarian, Nullitarian: the chief ministers of this American Church - threefold in denomination, one in nature - have naught to say against slavery. The Tract Society dare not rebuke "the sum of all villainies." The Bible Society has no "Word of God" for the slave, the "revealed religion" is not revealed to him. Writers of schoolbooks "remember the hand that feeds them," and venture no word against the national crime that threatens to become also the national ruin . . . The Democratic hands of America have sewed up her own mouth with an iron thread.

Mark Twain looked back on the Missouri of his mother's day:

She had never heard it [slavery] assailed in any pulpit but had heard it defended and sanctified in a thousand; her ears were familiar with Bible texts that approved it but if there were any that disapproved it they had not been quoted by her pastors; as far as her experiences went, the wise and the good and the holy were unanimous in the conviction that slavery was right.

The national reticence continued long after the Civil War. It skewed the historiography of Reconstruction for decades. In the early twentieth century, it whitewashed the South in popular culture and at sites like Monticello and Mount Vernon. It entertained the absurd notion that the Civil War was not fought over slavery but over tariffs, or states' rights, or federal usurpation. It encouraged Edmund Wilson to romanticize the Ku Klux Klan. In our time it has defended the Confederate Battle Flag as untainted by slavery. And it has kept the image of Jefferson relatively unclouded by the things he did to promote and protect and expand the slave power. Luckily, things are changing. The fine works I have been citing by Paul Finkelman, Leonard Richards, Don Fehrenbacher, William Freehling, and others show that we are finally coming to grips with the vast octopus that was slavery, with the tentacles it spread through every part of our nation and its political life. No, I guess an octopus is not the right image. For that we should turn again to Theodore Parker:

There is an old story told by the Hebrew rabbis, that before the flood there was an enormous giant called Gog. After the flood had got into the full tide of successful experiment, and every man was drowned except those taken into the ark, Gog came striding along after Noah, feeling his way with a cane as long as the mast of the Great Republic. The water had only come up to his girdle; it was then over the hill tops and was still rising - raining night and day. The giant hailed the Patriarch. Noah put his head out of the window and said, "Who is there?" "It is I," said Gog. "Take us in; it is

wet outside." "No," said Noah, "you're too big; no room. Besides, you're a bad character. You would be a very dangerous passenger, and would make trouble in the ark. I shall not take you in. You may get on top if you like." And he clapped to the window. "Go to thunder," said Gog. "I will ride, after all." And he strode after him, wading through the waters; and mounting on the starboard side, steered it just as he pleased, and made it rough weather inside. Now, in making the Constitution, we did not care to take in slavery in express terms. It looked ugly. We allowed it to get on the top astride, and it steers us just where it pleases.